UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Criminal No. 2:16cr83
	)	
EDWARD O. YODER,	)	Sentencing Date: February 8, 2017
	)	
Defendant.	)	

GOVERNMENT'S POSITION WITH RESPECT TO
SENTENCING FACTORS IN THE PRESENTENCE REPORT

The United States of America, through the undersigned attorney, respectfully submits this Position on Sentencing in this case. The United States concurs with the findings of the Presentence Investigation Report (PSR), and it further concurs that the Defendant's applicable Total Offense Level is 19 and that his Criminal History Category is I. At this time, the government moves for an additional one-level reduction in Offense Level for Acceptance of Responsibility. Therefore, the Defendant's advisory Sentencing Guidelines Range is 30-37 months of imprisonment. The government respectfully recommends that the Court impose a sentence within the advisory Sentencing Guideline range.

I. ***The United States Has No Objection to the PSR***

The United States hereby represents that it has no objection to the facts, the findings or to the calculations of the presentence report. The United States does not intend to call witnesses or present evidence at the sentencing hearing, however, the probation office will be available to testify, if necessary.

II. ***The Advisory Guideline Sentencing Range***

The probation officer has found the advisory guideline range to be 30 t0 37 months of imprisonment. No objections have been raised to the advisory guidelines.

III. An Advisory Guideline Sentence of 30 to 37 Months of Incarceration Complies with the Factors and Circumstance Set Forth in 18 U.S.C. 3553(a) and (b).

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court rendered the Sentencing Guidelines purely advisory, but emphasized that a sentencing court must consider both the Guidelines and the 18 U.S.C. § 3553(a) factors when making a sentencing decision. *Id.* at 264. The Supreme Court reaffirmed this principle in *United States v. Kimbrough*, 128 S. Ct. 558 (2007), emphasizing that "the Guidelines, formerly mandatory, now serve as one factor among several courts must consider in determining an appropriate sentence." *Id.* at 564. Finally, in *Gall v. United States*, 128 S. Ct. 586 (2007), the Supreme Court instructed that the sentencing court should calculate the Sentencing Guideline range, permit the government and the defendant "an opportunity to argue for whatever sentence they deem appropriate," consider all of the § 3553(a) factors, and finally pronounce a sentence taking into account all of the relevant factors. *Id.* at 596-97. The *Gall* Court further instructed that, in the event that the sentencing court decides to impose a variance sentence, the court "must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Id.* (noting that a "major departure should be supported by a more significant justification than a minor one").

Applying these standards, the Fourth Circuit has concluded that a sentencing court must: "(1) properly calculate the Guideline range; (2) allow the parties to argue for the sentence they deem appropriate and determine whether the § 3553(a) factors support the sentences requested by the parties; and (3) explain its reasons for selecting a sentence." *United States v. Simmons*, 269 Fed. App'x 272 at *1 (4th Cir. 2008) (*citing United States v. Pauley*, 511 F.3d 468, 473 (4th Cir. 2007)).

Section 3553(a) requires a sentencing court to consider the nature and circumstances of the offense and the history and characteristics of the defendant, as well as the need for the sentence imposed to: reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. Applying these sentencing factors to the facts of this case demonstrates that a sentence of 15 to 21 months of incarceration is appropriate and reasonable.

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant (Section 3553(a)(1))

From October 5, 2012, to January 24, 2014, in the Eastern District of Virginia, defendant EDWARD O. YODER, aided and abetted by co-defendant Susan Spearman, knowingly and fraudulently concealed bankruptcy assets, in violation of Title 18, United States Code, Section 152(1), in that:

EDWARD O. YODER, aided and abetted by co-defendant Susan Spearman, agreed to conceal the sum of approximately $350,000 from the chapter 7 Trustee and from EDWARD O. YODER's creditors. On July 11, 2011, EDWARD O. YODER. filed a voluntary bankruptcy petition in Case No. 11-73305- SCS, in the United States Bankruptcy Court for the Eastern District of Virginia. On August 22, 2011, EDWARD O. YODER filed a Schedule B – Personal Property schedule, which included under Paragraph 13: "Stock and interests in incorporated and unincorporated businesses." EDWARD O. YODER listed on that Schedule B: "153,000 shares of SIRIUS stock" with a current value of "$350,000.00." As of October 1, 2012, EDWARD O. YODER owned a taxable account in J.P. Turner & Company, including 132,950 shares of Sirius stock. On January 29, 2012, the court issued a Notice of Dismissal as to EDWARD O.

YODER's Chapter 11 bankruptcy petition. On or about October 3, 2012, EDWARD O. YODER transferred $25,000 from his Monarch Bank account to Spearman, which funds were deposited into Spearman's Monarch Bank account. On or about October 5, 2012, EDWARD O. YODER caused J.P. Turner & Company to sell the aforementioned Sirius stock and to wire the proceeds to his Monarch Bank account the sum of $339,660.19. On that same date, EDWARD O. YODER transferred from his Monarch Bank account to Spearman's Monarch Bank account, the sum of $330,000. On December 5, 2012, EDWARD O. YODER, for the purpose of concealing the aforesaid assets, filed a chapter 7 bankruptcy petition in Case No. 12-750028- SCS in the United States Bankruptcy Court for the Eastern District of Virginia and a chapter 7 Trustee was appointed. During the course of the bankruptcy case, EDWARD O. YODER did not disclose his sale of the Sirius stock and the wiring of the proceeds to his bank account and subsequent transfer to Spearmen's account, as required by the Statement of Financial Affairs. On December 19, 2012, Spearman transferred the sum of $330,000 and an additional $20,000, for a total of $350,000 from her account at Monarch Bank to her account with Infinex Financial Group, Virginia Asset Group, brokerage account ending in ending in 1859. Between December 5, 2012 and January 24, 2014, EDWARD O. YODER disbursed, or caused to be disbursed, $310,169.01 from Spearman's Infinex Financial Group, Virginia Asset Group, brokerage account ending in ending in 1859 to or for the benefit of EDWARD O. YODER. EDWARD O. YODER knowingly and intentionally concealed these transactions from the chapter 7 Trustee and the Trustee's counsel. Despite demand from the chapter 7 Trustee's counsel, EDWARD O. YODER failed to deliver or account for the balance of the funds.

History and Characteristics: The defendant is a 51-year old separated male with three female children ages 21, 19 and 17. A divorce cannot be legally finalized until 180 days after the defendant is sentenced in the federal case. The three daughters continued to reside with their mother after the separation in 1999, but they shared custody. The defendant has a minimal criminal history which includes a DUI in 2015. His Criminal History Category is I.

B. ***Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote the Respect for Law, and to Provide Just Punishment for the Offense (Section 3553(a)(2)(A))***

Title 18, U.S.C. 3553(a)(2) states that the court should fashion a sentence that will serve the various purposes of sentencing. All of the stated considerations are of course, relevant, and the government emphasizes the need for the sentence to provide just punishment and afford adequate deterrence. As previously stated, the defendant caused the loss of approximately $350,000 from the bankruptcy creditors and the Chapter 7 Trustee. With regard to deterrence, it is unlikely that his defendant will return to fraudulent criminal activity to pay off his substantial debts. The government's position is that a sentence within the advisory sentencing guidelines range would foreclose any thoughts along those line, as well as address the other Section 3553 factors mentioned above. Furthermore, the court must consider the societal goal of general deterrence. Overall, the sentence imposed should reflect the economic costs the public is forced to bear, in order to prevent the theft of private funds, and to detect and deter fraudulent behavior.

C. ***Need to Afford Adequate Deterrence and Protect Public from Further Crimes (Section 3553(a)(2)(B)-(C))***

Defendant is not likely to require deterrence or engage in additional serious crimes due to his personal history.

D. ***Avoiding Unwarranted Sentence Disparities (Section 3553(a)(6))***

Defendant is only one of two criminal defendants in this matter and he will be sentenced after the first defendant. Therefore, it is difficult to determine an appropriate sentence. The government believes that defendant should be sentenced within the 30 to 37-month advisory guideline range.

E. *Need to Provide Restitution to Any Victims of the Offense (Section 3553(a)(7))*

The Chapter 7 bankruptcy trustee has recovered a judgment against defendant for $364,660.19 in restitution, which is the loss amount is this case. Defendant will be subject to a criminal Restitution Judgment, which may be joint and several.

F. *Aggravating Factors*

There appears to be no aggravating factors for this defendant.

IV. *Conclusion*

For these reasons, as well as those to be articulated during the sentencing hearing on this matter, the United States respectfully requests that the Court sentence the defendant within the advisory guideline rand of 30 to 37 months of imprisonment.

Respectfully Submitted,

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By: /s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to:

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